IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.4058 OF 1998

Sony Kabushiki Kaisha ...Plaintiff

Versus

M/s.Anand Electrical & General Stores & Ors. ...Defendants

Shri Rahul Kadam alongwith Shri A.H.Kane i/by H.W.Kane for the Plaintiff.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 06, 2007.

ORAL JUDGMENT:

1. On the last date the suit was listed under the caption of "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiffs has tendered on record an affidavit of evidence of Mr.C.K.Virmani to which various documents on which the Plaintiffs are relying upon have been annexed. The said Mr.C.K.Virmani is the constituted attorney of the Plaintiffs.

2. According to the case of the Plaintiffs, the trade mark SONY was registered under the registration No.196589 on 20th June, 1960 in class 9 in respect of radio apparatus including radio apparatus with transistor and parts thereof included in class 9. On 03rd July, 1967 the Plaintiff registered trade mark SONY under registration No.242971B in class 9 in respect of

speakers, transistors, diodes and amplifiers none being for use as parts, all goods included in Class 9. On 23rd May, 1980 the Plaintiff registered a trade mark SONY under registration No.362126 in class 9 in respect of video taper recorders, video tapes (blank tapes), recorded video tapes, audio cassettes tapes, audio tape recorders, television sets and monitor sets and monitor television and other scientific, nautical, surveying electrical apparatus and instruments (including wireless), photographic, cinematograhic, optical, weighing, measuring, signally, checking (supervision), life saving and teaching apparatus and instruments, coin or counter-freed apparatus, talking machines, cash registers, calculating machines, fire extinguishing apparatus. In the year 1991 the Plaintiff obtained SONY Fan Club.

3. In March 1998, the Plaintiff learned that counterfeit SONY branded battery chargers are being sold in the market in Bombay. Therefore, the Plaintiff engaged services of Omnisight Services Private Limited, an investigating agency to find out whether the counterfeit SONY branded battery chargers are sold in Mumbai. The report of investigation dated 20th June, 1998 indicated that the Defendants in the suit were selling counterfeit SONY branded battery chargers.

However, the investigators could not find out the manufacturers.

4. The case of the Plaintiffs is that the trade mark SONY on the counterfeit battery charger sold by the Plaintiffs is either identical and/or deceptively similar to the Plaintiffs' trade mark SONY.

5. I have perused the affidavit of Mr.C.K.Virmani the claim of the Plaintiffs in the plaint has been duly proved by the said affidavit. The documents placed on record as P1 to P16 have been also duly proved by the said affidavit. In paragraph No.18, 19 and 21 of the said affidavit, it is stated as under:

> "18. In or about March, 1998 the Plaintiff learnt that counterfeit 'SONY' battery chargers are being sold in Mumbai market. Plaintiff asked their legal advisers to engage an investigation agency to investigate into the activities of the defendants. Investigation report was received by the attorneys and the report revealed that the defendants are selling spurious 'SONY' brand multi cell chargers and that the first defendant is the proprietary concern of the second defendant, the third defendant is the proprietary

concern of the fourth defendant, the fifth defendant is the proprietary concern of the sixth defendant and the seventh defendant is the proprietary concern of the eight defendant.

19. The trademark SONY is being used on the cartons of the counterfeit battery chargers in a manner, which is visually and structurally identical with and/or deceptively similar to the registered trademark of the Plaintiff. By such an act the defendants are creating confusion and deception in the minds of the people, reading to the belief that these chargers are produced by the Plaintiff and thereby connecting these counterfeit goods with the Plaintiff.

21. By using SONY as the most distinctive part of their trade/brand name of the defendants are passing off their goods as that of the plaintiff or at least connected with he plaintiff in some way. This will have the effect of diluting the trademark reputation and goodwill of the Plaintiff. Further, the Defendants are infringing the rights of the Plaintiff in the registered trademark nos.196589, 242071B and 362146."

6. In view of the said unchallenged affidavit and the documents placed on record, the Plaintiffs are entitled to a decree in terms of prayer clauses (a), (b) and (d). The Plaintiffs are also entitled to a decree in terms of prayer clause (c) except the bracketed portion.

7. Hence, the suit is decreed in terms of prayer clauses (a), (b), (c)-except bracketed portion starting from the words "that the Defendants" upto "in the alternative") and (d). The Defendants shall pay costs of the suit to the Plaintiff.

8. Certified copy is expedited.

JUDGE